IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 6555 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BISMILLAKHAN AKBARKHAN PATHAN - Applicant(s)

Versus

THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR MM TIRMIZI for Applicant(s) : 1,
MR HM PRACHCHHAK APP for Respondent(s) : 1,
MR HM PARIKH for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 24/10/2005

ORAL JUDGMENT

1. By filing this application under section 439 (2) read with section 482 of the Code of Criminal Procedure ('the Code' for short), the petitioner/original complainant seeks to challenge the order dated 18.8.2004

rendered in M. Case No.44 of 2003 registered with Anand Town Police Station by the learned JMFC, Anand by which respondent No.2 has been released on regular bail in connection with the offence registered with Anand Town Police Station, Anand vide M. Case No.44 of 2003 for commission of the alleged offences under sections 409, 465, 467, 468 and 471 of Indian Penal Code on his executing personal bond of Rs.10,000/- with surety of the like amount and on other terms and conditions mentioned therein and, therefore, prayed to cancel regular bail granted to him.

2. As per the averments made in the complaint registered with Anand Town Police Station, Anand, respondent No.2 was serving as Principal in the school run by the petitioner. Since 1990 one Farukbhai Ismailbhai Vohra was serving as a peon in the said school. He was arrested in the offence registered vide CR No.I-53/90 with Bhalej Police station under section 147, 148, 149, 302, 326 and 504 (2) of the IPC. The said peon Farukbhai was kept in judicial custody for about one year. For the said period of one year, respondent No.2 had regularly filled up the attendance of Farukbhai in the muster roll of the school and thus respondent No.2 has created forged document and withdrew the amount of

salary of peon Farukbhai Vohra. The petitioner, therefore, filed complaint before the learned JMFC, Anand against respondent No. 2 for commission of the alleged offences under Sections 409, 465, 467, 468 and 471 of IPC.

3. The said complaint was sent for investigation under section 156 (3) of the Code to Anand Town Police Station where it was numbered as M. Case No.44 of 2003. Respondent No. 2 applied for anticipatory bail. The said application same to be rejected. Thereafter respondent No.2 was arrested by the officers of the Anand Town police station and, therefore, he filed application for regular bail before the learned JMFC, Anand in connection with the said offence and the learned JMFC, Anand granted regular bail to respondent No.2 which has given rise to the present petition at the instance of original complainant.

4. This Court has considered the submissions advanced by Mr. Tirmizi, learned advocate for the petitioner, Mr. HM Prachchhak, learned APP for respondent No.1 - State of Gujarat and Mr. HM Parikh, learned advocate for respondent No.2/original complainant. This court has also perused the impugned order as well as various orders

annexed with the petition.

5. It may be noted that against the order dated 18.8.2004 passed by the learned JMFC, Anand, which is impugned in this petition, the petitioner had approached the learned Additional Sessions Judge, Nadiad camp at Anand for cancellation of bail by filing Criminal Rvision Application No.31 of 2004 which came to be rejected. Besides this, on the basis of the statement same by Mr. HM Parikh, learned advocate for the respondent No.2, this Court vide order dated 6.10.2005, had directed the trial court to accept the amount of 11 months salary of the peon which is alleged to have been misappropriated by respondent No.2 as per the allegations made against him in the FIR and in compliance of the said order, respondent No. 2 has already deposited the amount, the receipt whereof is also shown to this court.

6. In view of the aforesaid state of affairs, this Court does not deem it expedient to cancel the bail granted to respondent No.2.

7. Seen in the above context, the petition lacks merit and deserves to be rejected.

8. For the foregoing reasons, the petition fails and accordingly it is rejected. Rule is discharged.

(A.M. Kapadia, J.)

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